

WALTER SNELLMAN,	:	Order Affirming Decision
Appellant	:	
	:	
v.	:	
	:	Docket No. IBIA 98-83-A
PORTLAND AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	August 11, 1999

Appellant Walter Snellman seeks review of a decision issued on February 19, 1998, by the Portland Area Director, Bureau of Indian Affairs (Area Director; BIA). The decision adjusted the rental rate for Lease No. 7714, Lot 19 Ray Paul, along Pull and Be Damned Road on the Swinomish Indian Reservation. For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision.

By letter dated July 8, 1997, the Superintendent, Puget Sound Agency, BIA (Superintendent), notified Appellant that, pursuant to Provision No. 7 of his lease, his rental rate was being adjusted to \$5,040 per year for the five-year period beginning July 1, 1997.

Appellant appealed this adjustment to the Area Director. On February 19, 1998, the Area Director affirmed the Superintendent's decision. Appellant appealed to the Board.

While this appeal was pending, two previous Board decisions concerning rental rate adjustments for other leases along Pull and Be Damned Road were under consideration by the United States District Court for the Western District of Washington in Miller v. Bureau of Indian Affairs, Case No. C98-330Z. See Gossett v. Portland Area Director, 28 IBIA 72 (1995), and Elliott v. Portland Area Director, 31 IBIA 287 (1997). In an oral decision issued on March 24, 1999, the court affirmed the Department's rental rate adjustments in those cases. Although Appellant was not a party in the Federal court case and therefore that decision is not directly binding on him, the court's analysis of the leases and regulations is instructive.

The Board does not here repeat its general standard of review for rental rate adjustments or other legal parameters of this decision, which were fully set forth not only in the two decisions mentioned above, but also in a previous appeal from present Appellant. See Strain v. Portland Area Director, 23 IBIA 114 (1992) (decision in four consolidated appeals, including one from present Appellant).

The Board has carefully considered Appellant's brief before the Area Director and his two briefs on appeal, as well as the Area Director's decision and brief. Appellant challenges the BIA appraisal. In particular, Appellant argues that the appraisal should have been based solely on waterfront footage; that another lot which BIA considered comparable was actually much superior to the lot which he leases; that the BIA appraisal does not agree with information provided to him by real estate agents in the local area; and that the appraisal is not consistent with other leases of trust property, such as those at Shelter Bay, also on the Swinomish Reservation.

BIA based Appellant's rental rate adjustment on a Restricted Rental Value Report. The report did not use waterfront footage as the sole criterion for determining the appropriate rent for the lot, but rather compared a number of different factors, making adjustments where the lot leased by Appellant differed from the comparables. The report did not consider only one other lot, but rather considered multiple comparables. The report did not consider leases at Shelter Bay comparable, based on the unique circumstances surrounding that development. ^{1/}

Appellant does not agree with the results obtained from using the appraisal technique chosen by BIA, and would prefer the use of a different appraisal technique which would result in a lower rental rate adjustment. However, as the court held in Miller, Oral Ruling at 7: "The BIA has an absolute right to select any acceptable method of appraisal." Appellant has failed to show that the rental adjustment was not based on an acceptable appraisal technique.

Appellant raises several additional arguments which the Board finds lack merit for the same reason as it stated in Appellant's previous appeal: "While [Appellant] clearly believes that the rental value of his lease should be reduced because of factors he identifies, and disagrees with the BIA appraiser's analysis of the property, he produces no evidence that, as a matter of appraisal practice, it was unreasonable for BIA to decline to make allowances for these factors." Strain, 23 IBIA at 120.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Area Director's February 19, 1998, decision is affirmed.

Kathryn A. Lynn
Chief Administrative Judge

Anita Vogt
Administrative Judge

^{1/} For a discussion of the Shelter Bay development, see Swinomish Tribal Community v. Portland Area Director, 30 IBIA 13, recon. denied, 30 IBIA 89 (1996).